THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0068, Appeal of Rochester Tire & Automotive, the court on January 22, 2008, issued the following order:

The respondent, Rochester Tire & Automotive, appeals a decision of the hearings examiner for the petitioner, the New Hampshire Department of Safety, Division of Motor Vehicles, Bureau of Hearings, finding that the respondent violated pertinent regulations when it issued an inspection sticker to a certain vehicle and suspending the respondent's inspection privileges for thirty days. We affirm.

The respondent has the burden to show that the hearings examiner's decision was clearly unreasonable or unlawful. Appeal of N.H. Fireworks, 151 N.H. 335, 338 (2004). We will not vacate or reverse an agency order or decision except for errors of law, unless we are satisfied, by a clear preponderance of the evidence before us, that such order is unjust or unreasonable. Appeal of State of N.H., 144 N.H. 85, 88 (1999); see RSA 541:13 (2007). The hearing examiner's findings of fact are deemed lawful and reasonable. Appeal of N.H. Fireworks, 151 N.H. at 338.

The respondent first argues that the hearings examiner erred when he found that the respondent violated applicable rules by entering the vehicle's mileage on the inspection sticker in thousands of miles. The pertinent regulation requires "[a]ll information on the portion of the inspection sticker facing the passenger compartment of the vehicle [to] be accurately completed in its entirety." N.H. Admin. Rules, Saf-C 3209.03(a) (expired June 22, 2006; readopted and renumbered June 22, 2007, as N.H. Admin. Rules, Saf-C 3245.03(a)). This information includes the vehicle's mileage. See N.H. Admin. Rules, Saf-C 3209.03(b) (expired June 22, 2006; readopted and renumbered June 22, 2007, as N.H. Admin. Rules, Saf-C 3245.03(b)). The hearings examiner found that the respondent violated this rule by entering the mileage as 134,000 when, in fact, the correct mileage was 134,582. The hearings examiner's determination that in doing so the respondent violated New Hampshire Administrative Rules, Saf-C 3209.03(b) was not error.

The respondent argues that the hearings examiner's finding that the respondent violated applicable rules by affixing a sticker to the vehicle even though its fog lamps were not properly installed violated the respondent's due process rights because the hearing notice did not include this alleged violation. The respondent does not identify whether the due process rights it claims arise

under the Federal or State Constitutions and fails to cite a provision of either constitution. We will not address a party's state constitutional argument on appeal if the party does not specifically invoke in its brief a provision of the State Constitution. Anderson v. Motorsports Holding, 155 N.H. 491, 500-01 (2007). Accordingly, we address only the federal claim. Id.

Due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 314 (1950). Notice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure. See Lankford v. Idaho, 500 U.S. 110, 126 (1991).

Here, the notice of hearing informed the respondent that the hearing was based upon reports attached to the notice that listed the respondent's specific alleged rule violations. Attached to the notice was a request for administrative hearing that informed the respondent that the alleged violations concerned: (1) affixing an inspection sticker to an unsafe vehicle; and (2) failing to include required information on the vehicle's sticker. The initial investigative report was also appended to the notice, which included information that the vehicle's fog lamps were not installed or wired completely. We conclude that the above notice complied with due process and was reasonably calculated under all of the circumstances to apprise the respondent of the issues to be resolved at the administrative hearing. See Mullane, 339 U.S. at 314; Lankford, 500 U.S. at 126.

The respondent next contends that the record did not support the hearings examiner's finding that the fog lamps were not properly installed. The respondent, however, has failed to provide a transcript of the administrative hearing. As the moving party in this appeal brought pursuant to RSA chapter 541 (2007), the respondent was required initially to bear the full, reasonable cost of preparing the transcript for inclusion within the record. Appeal of City of Manchester, 149 N.H. 283, 290 (1999). Also, as the appealing party, the respondent was required to provide the court with a record sufficient to review the respondent's issues on appeal. See Rix v. Kinderworks Corp., 136 N.H. 548, 553 (1992); see also Sup. Ct. R. 13. Absent a transcript of the hearing before the hearing examiner, we must assume that the evidence was sufficient to support the examiner's decision. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004).

The respondent next argues that there is no administrative requirement that fog lamps be operational. The respondent contends that although New Hampshire Administrative Rule, Saf-C 3217.03 (expired June 22, 2006; readopted and renumbered June 22, 2007, as N.H. Admin. Rules, Saf-C

3215.04), requires that a vehicle be rejected if "[a]ny bulb, . . . or lamp fails to light or does not function properly," this rule applies only to lamps that are "required" by law. In construing regulations, words and phrases will be interpreted according to their plain and common usage unless it appears, from a reading of the regulation, that a different meaning was intended. Petition of Pelletier, 125 N.H. 565, 569 (1984). We conclude that the plain meaning of the word "[a]ny" extends to all bulbs or lamps, including those that are not required by law to be installed on a vehicle.

The respondent next asserts that the petitioner lacked the authority to suspend the respondent's inspection privileges because the regulation authorizing this sanction expired in June 2006. The petitioner, however, had statutory authority to suspend the respondent's inspection privileges pursuant to RSA 266:1, V (2004). RSA 266:1, V grants the petitioner the authority to revoke its authorization of properly qualified persons to make inspections without expense to the state. Given this clear statutory authority, promulgation of a rule was unnecessary for the petitioner "to carry out what a statute authorizes on its face." Smith v. N.H. Bd. of Psychologists, 138 N.H. 548, 553 (1994). Accordingly, that the petitioner operated under expired rules did not divest it of the authority to suspend the respondent's inspection privileges. See id.

The respondent next contends that the hearings examiner erred by permitting testimony about the respondent's prior violations. Absent a transcript of the hearing, we are unable to review this contention substantively. We assume that the record supports the hearings examiner's decision to admit the challenged evidence. See Bean, 151 N.H. at 250.

The respondent next argues that the hearing was unfair because the department of safety includes both adjudicative and investigative functions. Absent any evidence of actual bias against the respondent, we conclude that the combination of adjudicative and investigative functions within the department of safety did not render the hearing unfair. See Appeal of Huston, 150 N.H. 410, 412 (2004); see also Appeal of Trotzer, 143 N.H. 64, 68 (1998).

The respondent's remaining arguments are without merit and warrant no further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk